

IN SENATE OF THE UNITED STATES.

MARCH 1, 1845.

Submitted, and ordered to be printed.

Mr. EVANS made the following

REPORT:

*The Committee on Finance, to whom was referred a memorial of several ship owners and merchants of the city of New York, praying that certain duties paid by them upon the importation of coffee may be refunded, report :*

That, by the act of August 30, 1842, imposing duties upon imports, "tea and coffee, when imported in American vessels from the places of their growth or production," are entitled to be admitted free of duty. When imported from other places, they are subject to duty at the rate of 20 per centum ad valorem, by virtue of the 10th section of the act aforesaid.

By the 11th section of that act, an addition of ten per centum of the duty is required on merchandise imported in ships or vessels not of the United States, in certain cases; and a further addition of ten per centum "on all goods, wares, and merchandise, which shall be imported from any port or place east of the Cape of Good Hope, in foreign vessels." There is a proviso, however, attached to this section, in these words: "*Provided*, That these additional duties shall not apply to goods, wares, and merchandise, which shall be imported after the day that this act goes into operation, in ships or vessels not of the United States, entitled by treaty or by any act or acts of Congress to be entered in the ports of the United States, on the payment of the same duties as shall then be paid on goods, wares, or merchandise, imported in the ships or vessels of the United States."

The memorialists represent, that "since the last session of Congress the discriminating duty levied by the tariff act of 1842 on coffee imported from the Netherlands in Dutch vessels has been refunded;" and that coffee is now permitted to be imported from the Netherlands, in Dutch vessels, free of duty; whereas, when imported in American vessels from the same place, it is subject to duty at the rate of 20 per centum ad valorem. They complain of this discrimination against American shipping, and pray that a bill may be passed to refund all duties which have been collected upon coffee thus imported; and that the provisions of the act of 1842, subjecting it to duty, when imported from the Netherlands, may be repealed.

The committee have no official information of the grounds upon which any of the duties have been refunded upon importations in Dutch vessels. A resolution was adopted by the Senate on the 23d December last, calling upon the Secretary for minute information upon the subject of refunded

duties, but no answer has yet been received to that call. The delay is greatly to be regretted, as, should any information be received during this session, it will obviously be at so late a day as to render any further legislation by Congress upon the rates of duty chargeable by law, and the powers of the Secretary to refund, impossible. The committee have therefore been compelled to examine this claim, unaided by any information of the grounds of proceeding by the Treasury Department, and only by the lights which the papers before them furnish.

The memorialists refer to a report submitted to the House of Representatives at the last session of Congress, by the Committee on Foreign Affairs of that body, and to a bill accompanying that report; and *they* state that the duties which had been paid on importations in Dutch vessels have been refunded on "the ground assumed by the Committee on Foreign Affairs," viz: "that such discriminating duty was an infraction of the treaty existing between the United States and the Netherlands." The memorialists also regard it in the same light.

The committee have therefore recurred to the existing treaties between the two Governments, in order to ascertain whether the United States are precluded from imposing the discriminating duty required by the act of 1842.

The first article of the treaty of commerce and navigation between the two nations, concluded 19th January, 1839, is in these words:

"Goods and merchandise, whatever their origin, may be imported into or exported from the ports of the United States, from or to the ports of the Netherlands, in Europe, in vessels of the Netherlands, shall pay no other or higher duties than shall be levied on the like goods or merchandise so imported or exported in national vessels. And, reciprocally, goods and merchandise, whatever their origin may be, imported into or exported from the ports of the Netherlands, in Europe, from or to the ports of the United States, in vessels of the said States, shall pay no higher or other duties than shall be levied on the like goods and merchandise so imported in national vessels."

This article stipulates entire equality and reciprocity in the commerce between the United States and the ports of the Netherlands, in Europe; and, of course, whatever duties or restrictions are imposed upon it when carried on in American vessels, may rightfully be imposed upon it when carried on in Dutch vessels. This treaty is still in force, and forms the existing basis of the direct trade between the two countries. Coffee is not an article of the growth or production of the Netherlands. It cannot therefore be imported from the Netherlands in American ships without the payment of duty; and if not in American vessels, neither can it in Dutch vessels, unless by some other treaty this privilege has been granted to the ships of that nation.

The report of the Committee on Foreign Affairs, before referred to, considers it as conceded by the treaty of 1782, the second article of which is in these words:

"The subjects of the said States General of the United Netherlands shall pay, in the ports, havens, roads, countries, islands, cities, or places, of the United States of America, or any of them, no other or greater duties or imposts, of whatever name or denomination they may be, than those which the nations the most favored are or shall be obliged to pay."

This article is inaccurately quoted in the report submitted to the House.

It is there made to read, "no other or greater duties or imposts, of whatever name or *discrimination* they may be;" and stress is laid upon the word "*discrimination*," as evincive of the true meaning of the article. The word actually in this treaty is "*denomination*."

The committee do not deem it necessary to inquire whether the provisions of the treaty of 1782 are now in force in respect to this subject, or whether, if any discrepancy exist between the provisions of that treaty and those of the treaty of 1839, the former ought not to give way to the latter. If any greater liberty of commerce can be enjoyed under the stipulations of the earlier than there can under the latter arrangement, it may well be questioned whether those stipulations were not waived and modified by entering into the new agreement, which was to establish the basis upon which the commercial relations of the two countries should thereafter stand. But the committee do not pursue that inquiry, because they are clearly of opinion that the article in the treaty of 1782, which has been cited, even if in full force, is not at all impaired or violated by the act of 1842, requiring duty to be paid upon coffee, when imported in any vessels, from places other than those of its growth or origin. It is true that this article secures to the subjects of the Netherlands exemption from paying any higher duties in the ports of the United States than those which nations the most favored are obliged to pay; and it is argued that, inasmuch as Brazil may import coffee into the United States free of duty, it is a favored nation in this respect, and therefore the same favor must be extended to the Netherlands. But it must be remembered that Brazil cannot import coffee into the United States free of duty from any other place than that of its growth or origin. Brazilian vessels cannot import coffee from the Netherlands without paying the same duty which American vessels are obliged to pay. Brazil has no right, by treaty or otherwise, to import coffee into its own dominions from other places, and then to export it to this country free of duty. If Brazil has not this right, how can it be claimed for the Netherlands, on the ground that they are entitled to be placed on an equal footing of favor? Brazil is a place of the growth and production of coffee; hence, Brazilian coffee may be imported free of duty *direct* into the United States, in American vessels. By the fourth article of a treaty between the United States and Brazil, of 12th December, 1828, Brazilian vessels are placed upon a footing of entire equality and reciprocity with our own, in our ports and also in their ports. By the proviso to the eleventh section of the act of 1842, in connexion with the treaty just referred to, Brazilian vessels are entitled to import coffee into the United States free of duty, provided it be imported from the places of its growth or production. The Netherlands, it has already been said, is not such a place. Neither Brazil nor any other nation enjoys the privilege which seems to have been conceded to Dutch vessels, upon the ground that the subjects of the Netherlands are entitled to the privileges which the most favored nation enjoys. If it be said that coffee, the produce of Brazil, is allowed to be imported into the United States free of duty, while coffee, the produce of Dutch possessions, is chargeable with duty, and hence that Brazil is the most favored nation, the answer is, that the Brazilian production is not allowed to come in free of duty, unless brought directly from its place of growth; and that coffee of Dutch production may also be imported free of duty under the same restrictions. The act of 1842 contemplates only one direct voyage, from the place of growth to the United States, as a condition of entry free of duty.

All other nations, with whom we have commercial relations, must conform to this requirement, in the same manner that our own vessels are obliged to conform; and no treaty is violated by it, for no nation is so favored as to be allowed to make two voyages—first from the place of growth to some other place or possession, and thence in a distinct voyage to the United States. If no nation now enjoys this privilege, then Holland is already on the footing of the most favored nation, and coffee imported in Dutch vessels from the Netherlands is still subject to duty. Besides, whatever favors we have granted to Brazil have been reciprocated by equal favors granted to us. Before Holland can claim participation in any such privileges, it ought to appear that equivalents have also been received from her. It is unnecessary to enter upon the inquiry, whether such equivalents have been given, as the committee are decidedly of opinion that, in respect to the importation of coffee from places other than those of its growth, the two nations of Holland and Brazil, and the subjects and vessels of them, entire equality of privilege is now enjoyed, and that both stand upon the same ground with ships of our own country.

Under these impressions and convictions, the committee cannot recommend that the duties which have been paid upon imports in American ships be refunded, or that a law be passed, repealing the discriminating duty of the act of 1842. They are aware that thereby an injurious discrimination against American shipping, which they conceive was not intended by law, is likely to exist, unless the Secretary of the Treasury, upon reviewing his decision on this subject, should come to a different conclusion from that which he appears to have reached. If not, it will be for Congress, at its next session, to enact such explanatory law as it may deem proper. The committee recommend the following resolution :

*Resolved*, That the prayer of the petition ought not to be granted.

---

#### ADDITIONAL REPORT.

Since the preceding report was drawn, which was on the 19th February, a communication has been received (21st instant) from the Secretary of the Treasury, in answer to the resolution of the Senate of the 23d December last. The papers transmitted with it are quite voluminous, and the committee have not had the opportunity of a very careful examination of them. So far, however, as relates to the subject of the present inquiry, they find the grounds of proceeding on the part of the department stated in a circular from the Secretary, dated August 5, 1844, of which the following is an extract :

“The chargé d'affaires of His Majesty the King of the Netherlands has presented a complaint that the duty of 20 per cent. *ad valorem* levied upon coffee imported from the ports of the Netherlands is in contravention of the subsisting treaties between the United States and the King of the Netherlands, seeing that, by the ninth section of the act of 1842, coffee imported in vessels of the United States from the place of growth or production is exempt from duty.

“By the 1st article of the treaty of 1839 between the United States and the United Netherlands, it is stipulated that ‘goods and merchandise, whatever their origin may be, imported into or exported from the ports of the



United States, from or to the ports of the Netherlands, in Europe, in vessels of the Netherlands, shall pay no other or higher duties than shall be levied on the like goods and merchandise imported or exported in national vessels,' &c. As coffee imported in vessels of the United States is exempt from duty, it follows, from the treaty before recited, that coffee imported in the vessels of the Netherlands, from their ports in Europe, is exempt from duty. Therefore, such duties as have been so levied upon coffee so as aforesaid imported in vessels of the Netherlands from their ports in Europe must be refunded, and in future coffee so imported must be admitted free of duty."

It will be observed that this is not the ground taken by the Committee on Foreign Affairs in their report to the House of Representatives. In the opinion of that committee, the vessels of the Netherlands derived this privilege from the treaty of 1782, and not from that of 1839. The committee do not acquiesce in the construction given by the Secretary to the latter treaty. The article recited above stipulates entire equality in the imports and exports to and from the United States and the ports of the Netherlands, in Europe. Coffee imported in vessels of the United States is not, in all cases, as the generality of the expression used by the Secretary might seem to imply, free of duty. It is not so from the Netherlands. It is only *conditionally* free; that is, *on condition* of being imported from the place of its growth or origin. The decision of the Secretary grants the privilege, without requiring the performance of the condition.

If the committee, in the present case, had come to the conclusion that the act of 1842, imposing a duty upon coffee when imported from places other than those of its growth or production, conflicted with any of our treaty stipulations, then a very grave and serious question would have been presented for the consideration of the committee and of Congress; and that is, how far it is competent for the Treasury Department, or the Executive Government, to refuse to carry into execution a law of Congress, on the ground of such conflict. It might furnish a very good reason why the President should withhold his approval from the enactment of the law; but, having been enacted, can any department of the Government, except the Legislative, apply the remedy? Upon this question, the committee are not now called upon to express an opinion, and they refrain from doing so, regarding it as one of serious and grave importance, which may hereafter require very careful and mature consideration. On the one hand, the Constitution of the United States provides, that "all treaties made, and which shall be made, under the authority of the United States, shall be the supreme law of the land." The same instrument also ordains, that "*Congress* shall have power to lay and collect taxes, duties, imposts, and excises," &c.

In the 5th clause of the 8th section of the act of 1842, it is provided, that "nothing herein contained shall be construed or permitted to operate so as to interfere with subsisting treaties with foreign nations." But it is obvious that this proviso refers only to the clause in which it is found, which imposes duties upon brandy, wines, &c.; and it is known to the committee that it was inserted with reference to our treaty with Portugal, which, it was insisted by the diplomatic representative from that country, would be invaded by the act as it stood, without the proviso.

[ 832 ]

ESTABLISHED

28th  
2